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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 DAVID PIMENTEL and ALDO  
11 PIMENTEL,

12 Plaintiffs,

13 v.

14 DEUTSCHE BANK NATIONAL  
15 TRUST COMPANY; *et al.*,

Defendants.

Civil No. 09cv2659 JAH(CAB)

**ORDER *SUA SPONTE*  
REMANDING COMPLAINT TO  
STATE COURT PURSUANT TO  
FED.R.CIV.P. 12(h)**

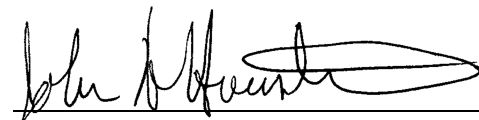
16 On November 10, 2009, plaintiffs David and Aldo Pimentel (“plaintiffs”), through  
17 counsel, filed a complaint before the California Superior Court, County of San Diego,  
18 alleging nine causes of action: (1) quiet title; (2) violation of the Home Ownership Equity  
19 Protection Act (“HOEPA”), 15 U.S.C. § 1639 *et seq.*; (3) violation of the Truth in Lending  
20 Act (“TILA”), 15 U.S.C. §§ 1601-1667(f) and Regulation Z, 12 C.F.R. § 225.32(e)(1); (4)  
21 violation of the Real Estate Settlement Procedure Act (“RESPA”); (5) unfair trade practice;  
22 (6) breach of contract; (7) rescission; (8) conversion; and (9) declaratory relief. Defendants  
23 Ocwen Loan Servicing, LLC and Deutsche Bank National Trust Company (collectively  
24 “defendants”) removed the complaint to this Court on November 24, 2009. ~~Defendants~~  
25 subsequently filed a motion to dismiss the complaint on December 3, 2009, pursuant to  
26 Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Doc. # 3. After the motion had  
27 been fully briefed by the parties, this Court, on September 20, 2010, issued an order  
28 granting in part and denying in part defendants’ motion to dismiss, providing plaintiffs

1 with the opportunity to file an amended complaint by October 8, 2010. *See* Doc. # 11.  
2 In that order, this Court dismissed all of plaintiff's federal claims, leaving only plaintiffs'  
3 first and sixth causes of action for quiet title and breach of contract along with plaintiffs'  
4 request for declaratory relief. *See id.* Plaintiffs did not file an amended complaint by  
5 October 8, 2010 nor have they sought an extension of time to do so.

6 This Court notes that the instant complaint was removed to this Court on the sole  
7 basis of federal question jurisdiction. *See* Doc. # 1 at 3. However, at this time, no federal  
8 question jurisdiction exists. Pursuant to Federal Rule of Civil Procedure 12(h),  
9 "[w]henver it appears . . . that the court lacks jurisdiction of the subject matter, the court  
10 shall dismiss the action." Fed.R.Civ.P. 12(h)(3). The Ninth Circuit has interpreted this  
11 rule to permit district courts to raise the issue of subject matter jurisdiction *sua sponte* at  
12 any point in the litigation, even on appeal. *See Snell v. Cleveland, Inc.*, 316 F.3d 822, 826  
13 (9th Cir. 2002). Therefore, this Court deems it appropriate to remand this case back to  
14 state court based on lack of federal question jurisdiction pursuant to Rule 12(h).

15 Accordingly, IT IS HEREBY ORDERED that the instant complaint is  
16 **REMANDED** back to state court for all further proceedings.

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18 DATED: January 18, 2011



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20 JOHN A. HOUSTON  
United States District Judge  
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